dealing with the property of the state. Because of its proprietary interest, the state may necessarily be involved.[1] Where the state itself is plaintiff, the court may allow a cross-bill or set-off to be maintained against it.[2] This is not a real exception to the rule, for the state has submitted voluntarily to the jurisdiction of the court as an ordinary suitor. But no judgment, even for costs, can be rendered against the state.[3]

THE LIMITATION OF GROUNDS FOR REVERSAL FOR ERROR. — A serious fault in the administration of American law is the frequency with which our appellate courts order new trials. To the literature on this topic Judge Charles F. Amidon has recently added an admirable essay. *The Quest for Error and the Doing of Justice*, 40 Am. L. Rev. 681 (September–October, 1906). Judge Amidon points out that there has been no improvement since 1887, when new trials were granted in forty-six per cent of the cases appealed in the United States, while in England from 1890 to 1900 the percentage was under four. The defect in administration here, it is said, is that where error is found, prejudice is presumed and the judgment reversed, thus requiring of the trial court infallibility rather than justice. Nothing should be presumed, since the court can see the facts by examining the record; but the temporary greater ease and speed offered by this summary method procured its adoption. The effect on the trial judge has been to divert much of his attention from the question at issue to a multitude of small points, and on the lawyer to put him on a constant hunt for error, equally as important as securing the verdict. The remedy offered by the writer is that no new trial should be granted unless the court, after examining the whole record, finds there has been a miscarriage of justice. This plan has been adopted in England. The verdict, which we have made an end, would be restored to its proper function of being a means of doing justice, without infringing the right of having controverted questions of fact passed upon by a jury. And finally, the writer declares, because of our failure to adopt some such remedy, the machinery of our criminal law is breaking down.

But it is not an accurate statement that on appeal infallibility is required on the part of the trial courts. To be sure, when error exists in the record, one line of cases declares that prejudice is to be presumed unless the contrary is proved, but another maintains that it is not to be presumed unless proved. It would be useless as well as impractical to decide which has the greater support in view of the multitude of cases in point.[4] The doctrine is also well established here that there can be no reversal in favor of a party against whom the court would be justified in directing a verdict.[5] In several states statutes forbid reversal for error not affecting the merits of the action.[6] But Judge Amidon goes further in urging reversal only for prejudice amounting to injustice, and in a few cases our courts have gone thus far.

The old common law principle was not to reverse unless the real truths of the case had not been disclosed.[7] The spirit of the present practice is contentious, offering to the litigants a fair fight with the judge as umpire. But this is really discrimination in favor of the richer litigant. Its result has been to increase our courts' burdens. The common law principle was a trial by the court assisted by the jury, while we have now evolved a trial by the jury with the aid of the

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[1] See Christian *v.* Atlantic, etc., Ry. Co., 133 U. S. 233.
[2] Port Royal Ry. Co. *v.* South Carolina, 60 Fed. Rep. 552.
[3] See Reeside *v.* Walker, 11 How. (U. S.) 272; New York *v.* Dennison, 84 N. Y. 272.
[4] See, *e. g.*, 2 Encyc. of Plead. and Prac. 532; 3 Cyc. 386.
[5] See 3 Cyc. 385.
[6] See Mo. Rev. Stat. 1899, § 865.
[7] See New Trials for Erroneous Rulings, by Professor J. H. Wigmore, 3 Colum. L. Rev. 433.

court.[1] Our courts are constantly ordering and setting aside verdicts, thus weighing all the evidence and deciding what its effect should be. The principles which permit such procedure would justify the courts in weighing a piece of excluded evidence and determining its effect on reasonable men. In a late series of articles by prominent lawyers in one of the magazines,[2] Judge Amidon's statistics have been discussed, and his statement of the inefficiency of our criminal law machinery has in general been approved. On the whole there can be little doubt of the expediency of a change along the line he suggests, so far as our constitutions permit.

ADMISSIBILITY OF DECLARATIONS OF THE INSURED AGAINST THE BENEFICIARY. *Albert Martin Kales.* Declarations of the insured made after the date of the policy should not be admitted against the beneficiary, though the latter's interest is, by the terms of the policy, revocable. 6 Colum. L. Rev. 509.

AMENABILITY OF MILITARY PERSONS TO THE LAWS OF THE LAND. *Charles E. Smoyer.* Concisely summarizing their accountability to the concurrent jurisdictions of federal, state, and military courts. 5 Mich. L. Rev. 12.

BASIS OF CASE-LAW. II. *A. H. F. Lefroy.* Public Policy and other practical considerations as primary sources of case-law. 22 L. Quar. Rev. 416.

CAUSES OF POPULAR DISSATISFACTION WITH THE ADMINISTRATION OF JUSTICE, THE. *Roscoe Pound.* 40 Am L. Rev. 729; 14 Am. Lawyer 445.

CONCERNING THE CONSTITUTIONALITY OF THE LAW REGULATING INTERSTATE RAILWAY RATES. *D. Walter Brown.* A brief argument in favor of its constitutionality. 6 Colum. L. Rev. 497. See 19 HARV. L. REV. 487; 20 *ibid.* 127.

CONSENSUS IN DOCTRINE BY THE STATES OPPOSED BY FEDERAL DECISION. *Anon.* A brief consideration of the question when the federal courts should follow the decisions of the state courts. 3 The Law 134.

CONSIDERATION OF THE UNIFORM NEGOTIABLE INSTRUMENTS LAW, A. *John D. Milliken.* Discussing the origin, history, and criticism of the law. 14 Am. Lawyer 346.

CONSTITUTIONAL LIMITATIONS ON THE REGULATION OF CORPORATIONS. *Frederic R. Coudert.* Discussing the different application of constitutional provisions to individuals and to corporations. 6 Colum. L. Rev. 485.

DOCTRINE OF HADDOCK *v.* HADDOCK, THE. *Henry Schofield.* Supporting the result of the case, and arguing that a state should not be allowed to consider a divorce case at all unless it has personal jurisdiction of the parties. 1 Ill. L. Rev. 219. See 19 HARV. L. REV. 586.

EQUALITY IN RATES BY PUBLIC SERVICE CORPORATIONS. *Anon.* Maintaining that the law requiring equal rates from carriers should be extended to all public service corporations. 3 The Law 262.

FUTURE INTERESTS IN LAND. II. *Albert Martin Kales.* 22 L. Quar. Rev. 383. See *supra.*

GROWTH, AGGRESSIVENESS, AND PERMANENT CHARACTER OF ANGLO-SAXON LAWS AND INSTITUTIONS, THE. *Albert W. Gaines.* A historical sketch. 40 Am. L. Rev. 694.

HARTER ACT AND BILLS OF LADING LEGISLATION, THE. *F. Sieveking.* Reviewing European agitation favoring legislation invalidating clauses in bills of lading which relieve ship owners from liability for loss caused by the masters or crew, and opposing such legislation at present. 16 Yale L. J. 25.

HAS THE FEDERAL GOVERNMENT A POLICE POWER? *Anon.* Contending that it has such power in certain cases, sufficient to justify on constitutional grounds pure food legislation. 32 Nat. Corp. Rep. 849.

HOW FAR WILL THE SUPREME COURT GO IN REVIEWING THE ACTION OF THE INTERSTATE COMMERCE COMMISSION UNDER THE NEW RATE LAW? *Anon.* Submitting that the courts will investigate questions of fact only to determine whether the rate fixed is confiscatory. 32 Nat. Corp. Rep. 877.

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[1] See The Administration of the Jury System, by Judge H. B. Brown, 17 Green Bag 623, 624.

[2] See The Outlook for Sept. 8, 1906, *et seq.*

IS THE ACT OF CONGRESS OF JUNE 11, 1906, KNOWN AS THE "EMPLOYER'S LIABILITY ACT," UNCONSTITUTIONAL? *J. J. McSwain.* Contending that the Act is not unconstitutional *in toto* because the language is so broad as to include a class of cases over which Congress has no power to legislate. 63 Cent. L. J. 356.

LARCENY FOR DIRECTORS TO CONTRIBUTE TO A POLITICAL CAMPAIGN FUND. *Anon.* Briefly commenting on and agreeing with a recently reversed New York decision which held such action to be larceny. 3 The Law 133. See 19 HARV. L. REV. 611.

LAWYERS AND CORPORATE CAPITALIZATION. *Edward M. Shepard.* Advocating the repeal of statutes which require corporations to file their specific capitalization and par value of stock at the time of incorporation, as a relief to the evils of fictitious values and consequent loss of public confidence. 18 Green Bag 601.

LEGAL ASPECTS OF OUR INTERVENTION IN CUBA. *Edwin Maxey.* Suggesting solutions to several novel questions which may arise under the provisional government of the United States in Cuba. 14 L. Stud. Helper 301.

LIABILITY OF SURETY FOR PAYMENT OF RENT. *Anon.* Supporting Stacey *v.* Hill, which decided that a surety is not liable on disclaimer by a trustee in bankruptcy of the lessee. 25 L. N. (London) 339.

LIBEL BY PRAISE. *Anon.* A consideration of a recent Louisiana case commonly said to involve this doctrine. 23 Chi. L. J. 231. See 19 HARV. L. REV. 527.

PERJURY BY PRISONERS IN THE WITNESS-BOX. *Anon.* Maintaining that convictions for such false swearing are proper, not being double jeopardy or a retrial of *res judicatae.* 70 J. P. 469.

QUEST FOR ERROR AND THE DOING OF JUSTICE, THE. *Charles F. Amidon.* 40 Am. L. Rev. 681. See *supra.*

SERVICE OF SUMMONS — ELEMENTS OF ACT — DUTY OF PERSON SERVING ON REFUSAL TO ACCEPT PROCESS. *Anon.* A statement of the New York rules of procedure not found in the civil code. 7 Bench and Bar 25.

SPLITTING UP CAUSES OF ACTION ON CONTRACT. *Raymond D. Thurber.* Covering the New York law on the subject, and reconciling so far as possible the decisions in various classes of cases. 7 Bench and Bar 13.

SUITS AGAINST STATES BY INDIVIDUALS IN FEDERAL COURTS. *William Trickett.* 11 The Forum 25. See *supra.*

TORRENS SYSTEM, THE. *Howell Griswold, Jr.* Advocating a system for recording titles by which the investigation would be done by court officers and the title guaranteed by the state. 13 The Bar 16.

UNCONTRADICTED TESTIMONY OF INTERESTED WITNESSES. *C. C. M.* Showing the bearing of the New York cases upon the question, and protesting against the separate classification of interested witnesses as to credibility. 10 L. N. (Northport) 147.

VICE-PRINCIPAL DOCTRINE IN ILLINOIS, THE. *George Haven Miller.* With exhaustive Illinois citations. 1 Ill. L. Rev. 242.

WHAT IS EQUAL PROTECTION OF LAWS AS APPLIED TO TAX LAWS? *C. R. Skinker.* Arguing that it is not necessary that law should apply to all property in all parts of a political subdivision. 63 Cent. L. J. 318.

YEAR BOOKS, THE. II. *W. S. Holdsworth.* Their emphasis of the law of real property and pleading. 22 L. Quar. Rev. 360.

II. BOOK REVIEWS.

THE VICTORIAN CHANCELLORS. By J. B. Atlay. In two volumes, with portraits. Volume I. Boston: Little, Brown & Company. 1906. pp. xi, 466. 8vo.

Mr. Atlay's book will appeal to many readers. It will appeal to the student of history and political science, for those who have sat upon the Woolsack have left their impress on legislation and upon the development of constitutional government in England; it will appeal to the lover of biography, because it is an excellent example of that branch of literature, and deals with the careers of interesting and noted men; and it will appeal to lawyers, American as well as English, for they will be glad to read the lives of the men whose labors and decisions have done much to mold the development of equity.

It is difficult, if not impossible, to point out in any other country an office whose holder exercises so many separate functions as does the Lord Chancellor